Supreme Court, U.S.
FILED
OCT - 7 2016
OFFICE OF THE CLERK

Nos. 15-1111 and 15-1112

In the Supreme Court of the United States

BANK OF AMERICA CORP., ET AL., PETITIONERS

v.

CITY OF MIAMI, FLORIDA

WELLS FARGO & CO., ET AL., PETITIONERS

v.

CITY OF MIAMI, FLORIDA

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTIONS PRESENTED

1. Whether the requirement in the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, that a plaintiff be an "aggrieved person" is more stringent than Article III's injury-in-fact requirement, and, if so, whether the City of Miami's alleged injuries would arguably fall within the statute's zone of interests.

2. Whether the injuries alleged by the City of Miami—which flowed directly from the concentration of foreclosures in predominantly minority neighborhoods—were proximately caused, within the meaning of the Fair Housing Act, by petitioners' allegedly discriminatory lending practices.

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INTEREST OF THE UNITED STATES

This case presents questions about who may bring suit, and for what injuries, in response to allegedly discriminatory housing practices in violation of the Fair Housing Act (FHA or Act), 42 U.S.C. 3601 *et seq.* The Secretary of the Department of Housing and Urban Development (HUD) and the Attorney General of the United States share authority for enforcing the Act. See 42 U.S.C. 3610, 3612, 3614. The Court's decision about who may be an "aggrieved" person under the Act will affect who may file an administrative complaint

with HUD (42 U.S.C. 3610(a)(1)(A)(i)) and may affect the category of persons on whose behalf the Attorney General seeks monetary damages in enforcement actions (42 U.S.C. 3614(d)(1)(B)). Moreover, private litigation under the Act is a critical supplement to enforcement by the federal government. The United States accordingly has a substantial interest in the Court's resolution of the questions presented.

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the FHA, 42 U.S.C. 3601 *et seq.*, are set forth in the appendix to this brief, *infra*, 1a-23a.

STATEMENT

1. The FHA, first enacted in 1968 and significantly amended in 1988, represents Congress's response to economic and social forces that "left minority families concentrated in the center of the Nation's cities," where "residential segregation and unequal housing and economic conditions" resulted in "neighborhoods marked by substandard housing and general urban blight." *Texas Dep't of Hous. & Community Affairs* v. *Inclusive Communities Project*, 135 S. Ct. 2507, 2515-2516 (2015) (citation and quotation marks omitted). The FHA declares the "policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601.

As relevant here, the Act makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race * * * or national origin." 42 U.S.C. 3604(b). It also forbids discrimination by "any person or other entity whose business includes engaging in residential real estate-related transactions

* * * in making available such a transaction, or in the terms or conditions of such a transaction, because of race * * * or national origin." 42 U.S.C. 3605(a).

The FHA may be enforced through the filing of an administrative complaint with HUD or through a civil action in federal or state court. 42 U.S.C. 3610-3614. A civil action may be filed either by the Attorney General, 42 U.S.C. 3612(*o*), 3614(a) and (b), or by "[a]n aggrieved person," 42 U.S.C. 3613(a)(1)(A). The statute defines "[a]ggrieved person" to include

> any person who—
>
> (1) claims to have been injured by a discriminatory housing practice; or
>
> (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

42 U.S.C. 3602(i).

2. In 2013, respondent brought separate but parallel suits against petitioners, claiming that they had used racially discriminatory practices, in violation of the FHA, to target minority homeowners for exploitative loans that were more likely to fail. BofA Pet. App. 4a-7a; WF Pet. App. 3a-5a.[1] Respondent alleged that petitioners deliberately targeted minority homeowners for loans with more onerous terms than those offered to comparably qualified non-minority borrowers. BofA Pet. App. 9a-10a; WF Pet. App. 7a-8a. Respondent identified statistical evidence allegedly showing that petitioners more often sold loans with less-favorable terms to minority homeowners (*e.g.*, loans with higher

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[1] "BofA Br." and "BofA Pet. App." refer to the petitioners' brief and petition appendix in No. 15-1111. "WF Br." and "WF Pet. App." refer to those documents in No. 15-1112.

interest rates, interest-only payments, balloon payments, variable interest rates, prepayment penalties that made refinancing virtually impossible, and negative amortization leading to a loan balance that grew over time). BofA Pet. App. 2a-3a, 6a-7a; WF Pet. App. 5a-7a. It alleged that Bank of America closed on 3326 discriminatory loans in Miami between 2004 and 2012, J.A. 95, and that Wells Fargo closed on 999 discriminatory loans in Miami during the same period, J.A. 341.[2]

Respondent alleged that those lending practices led to rampant foreclosures in Miami's predominantly minority neighborhoods, that the banks knew they had made a large number of discriminatory loans to borrowers who were concentrated in those neighborhoods, and that the banks had adequate statistical models and data to know that many of those loans would fail. BofA Pet. App. 5a-8a; WF Pet. App 4a-6a; J.A. 40-41, 277. Respondent claimed that it suffered financial harm because foreclosure-ridden neighborhoods became a drain on municipal services. BofA Pet. App. 5a, 10a; WF Pet. App. 4a, 8a. It further alleged that falling property values in blighted neighborhoods reduced the City's tax base. *Ibid.* To show the causal link to discriminatory lending, respondent offered a statistical method to distinguish the harms caused by foreclosures upon racially discriminatory loans from the

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[2] In 2011 and 2012, the United States settled suits that it had brought against Wells Fargo and Countrywide Financial Corporation (a Bank of America subsidiary) alleging housing discrimination in violation of the FHA. Those suits focused on conduct between 2004 and 2009 and obtained damages for borrowers. They included some allegations similar to respondent's. The complaints and the consent orders are available at https://www.justice.gov/crt/housing-cases-summary-page#countrywide and https://www.justice.gov/crt/housing-cases-summary-page#wellsfargo.

harms that resulted from other foreclosures or unrelated changes in the housing market. BofA Pet. App. 7a, 10a; WF Pet. App. 5a-6a, 8a.

3. The district court dismissed the complaints. BofA Pet. App. 58a-76a; see WF Pet. App. 81a (incorporating *Bank of America* dismissal order). The court concluded that the claims fell outside the FHA's "zone of interests," because respondent alleged "merely economic injuries" that were not "affected by a racial interest." BofA Pet. App. 66a-68a. The court also concluded that respondent had not adequately alleged proximate causation because it could not isolate the contributions of petitioners' predatory lending to foreclosures or show that the "foreclosures caused the City to be harmed." *Id.* at 69a-70a. Finally, the court concluded that the claims, which identified no specific discriminatory loans made after 2008, fell outside the two-year statute-of-limitations period. *Id.* at 71a-72a; see 42 U.S.C. 3613(a)(1)(A).

Respondent filed motions for reconsideration and for leave to file first amended complaints, which included additional allegations of noneconomic harms and continuing harm within the limitations period. BofA Pet. App. 13a-14a; WF Pet. App. 11a-12a. The district court denied the motions, concluding that, even if an amended pleading could cure the statute-of-limitations problem, the alleged harms remained outside the FHA's zone of interests. BofA Pet. App. 77a-83a; WF Pet. App. 72a-80a.

4. The court of appeals affirmed in part, reversed in part, and remanded for further proceedings. BofA Pet. App. 1a-55a; WF Pet. App. 1a-19a. It issued separate opinions but gave its "most detailed" reasoning in *Bank of America*. BofA Pet. App. 2a n.1.

a. The court of appeals had "little difficulty in finding" that respondent's allegations were sufficient "to allege an injury in fact for constitutional standing purposes." BofA Pet. App. 17a. The court noted the similarities between the allegations here and those in *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979). In both cases, a municipality challenged discriminatory conduct that allegedly "reduced local property values and diminished its tax base." BofA Pet. App. 17a-18a. Because that sufficed for Article III injury in *Gladstone*, the court held that it also did here. *Ibid.* With respect to "Article III causation," the court "acknowledge[d] the real possibility of confounding variables" but found "the City's alleged chain of causation" to be "plausible and sufficient" to establish Article III standing at the pleading stage. *Id.* at 18a-19a.

b. Turning to the zone-of-interests question, the court of appeals held that it was bound by decisions from this Court "stating that so-called statutory standing under the FHA extends as broadly as Article III will permit." BofA Pet. App. 19a. It explained that three decisions—*Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 209-210 (1972), *Gladstone*, 441 U.S. at 109-110; and *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 372 (1982)—had been "clear as a bell" in reaching that conclusion. BofA Pet. App. 22a-23a, 27a. The court noted that more recent decisions have "cast some doubt on the broad interpretation of FHA statutory standing in *Trafficante*, *Gladstone*, and *Havens*." *Id.* at 25a-26a. It concluded, however, that even if decisions arising under other statutes signal that this Court may "narrow its interpretation of the FHA in the future," the "still-undisturbed holding of [this] Court's FHA cases is that the definition of an 'ag-

grieved person' under the FHA extends as broadly as permitted under Article III." *Id.* at 28a. That broad zone of interests "encompasses the City's allegations in this case," because "the City has specifically alleged that its injury is the result of" petitioners' discriminatory housing practices. *Id.* at 30a.

c. The court of appeals also held that respondent has adequately pleaded proximate cause by alleging harms with "a sufficiently close connection to the conduct the statute prohibits." BofA Pet. App. 40a-41a (citation omitted). The court explained that "proximate cause is not a one-size-fits-all analysis: it can differ statute by statute." *Id.* at 35a. It declined to adopt "the strict directness requirement" urged by petitioners because *Gladstone* and *Havens* allowed FHA suits to be brought by entities that had "not themselves been directly discriminated against." *Id.* at 36a. The court observed that "the proper standard, drawing on the law of tort, is based on foreseeability." *Id.* at 38a. Applying that standard, the court found that—for purposes of a motion to dismiss—respondent had adequately alleged, on the basis of analytical tools and published reports accessible to petitioners, that their "discriminatory lending caused property owned by minorities to enter premature foreclosure, costing the City tax revenue and municipal expenditures." *Id.* at 38a-39a. "Of course," the court cautioned, "whether the City will be able to actually prove its causal claims is another matter altogether." *Id.* at 41a.

SUMMARY OF ARGUMENT

I. Respondent has alleged injuries sufficient to make it an "aggrieved person" able to file a civil action to enforce the Fair Housing Act.

A. The FHA's cause of action is available to anyone who satisfies Article III standing requirements, without requiring any further showing that the plaintiff is within a statutory zone of interests. Three times in 11 years, this Court held that Congress intended for standing under the FHA to be as broad as Article III permits. See *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 372 (1982); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 109 (1979); *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972). In 1988, Congress ratified those decisions by amending the FHA and adopting a definition of "aggrieved person" that was materially identical to the one that the Court had previously applied.

The Court's decision in *Thompson* v. *North American Stainless, LP*, 562 U.S. 170 (2011), does not justify any departure from those decisions. *Thompson* held that provisions that allow an "aggrieved" person to bring an employment-discrimination suit under Title VII reflect the common usage of the term "aggrieved," and therefore include a zone-of-interests limitation narrower than Article III. The FHA, however, includes its own, broader, definition of "[a]ggrieved person," 42 U.S.C. 3602(i), which the Court has interpreted to reach to the limits of Article III.

To be sure, *Thompson* suggested that the relevant language in *Trafficante* could be read more narrowly, and it stated in dictum that the Court's FHA holdings are consistent with a narrower zone-of-interests test. But the Court conceded that the language in subsequent cases (including *Gladstone*) was broad and unqualified, and *Thompson* did not purport to overrule or narrow them. And *Thompson* was, in any event, wrong about the "holdings" of the prior FHA cases.

The holding of a case includes its rationale. In all three of the FHA cases, the Court grounded its rationale solely in Article III. After determining that plaintiffs had Article III standing, the Court conducted no separate zone-of-interests analysis. And, when Congress amended the FHA in 1988, it was universally understood that the Court's earlier decisions about the lack of any non-Article-III limits on the FHA's cause of action had been "holdings," not dicta.

B. If, despite its earlier decisions, the Court holds that the FHA's cause of action does not extend to the limits of Article III, respondent's alleged injuries would still fall within that statute's zone of interests. The breadth of the zone of interests varies according to the statute at issue. The FHA is broad and inclusive, and it must accommodate the various injuries that this Court found sufficient in *Trafficante*, *Gladstone*, and *Havens*.

Respondent alleges that petitioners' discriminatory lending practices resulted in foreclosures concentrated in predominantly minority areas of Miami, which decreased the City's property-tax revenues and increased the costs of municipal services. The FHA was intended, in part, to address such injuries. Its supporters (and the earlier report of the Kerner Commission) warned that continued housing discrimination would lead to blight, injure municipal tax bases, and imperil municipal services. This Court's decision in *Gladstone* permitted a municipality's suit for similar injuries, explaining that a village had standing to challenge racial-steering practices that could lead to "serious economic dislocation" by decreasing property values, "diminishing" the local "tax base," and threatening local "services." 441 U.S. at 110-111 & n.23.

Petitioners' proposed categorical restrictions on the FHA's zone of interests would curtail long-standing practice under the Act. The Court has already concluded that an FHA plaintiff need not be the party who was directly discriminated against. Nor is there a bar on recovering for financial injuries by persons who are not the direct victims of discrimination. Participants in the housing industry—such as private developers, realtors, and property sellers—are directly harmed when their potential customers or counterparties are the targets of discrimination, and their financial recoveries serve the FHA's purposes even if they are interested in integrated housing for the sake of profit. Private FHA enforcement suits remain a critical supplement to governmental enforcement, and the Court should not close existing avenues of enforcement.

II. Respondent has also adequately alleged that its injuries were proximately caused by petitioners' discriminatory practices. Although Congress implicitly incorporated background tort principles into the FHA, proximate-cause analysis is controlled by the nature of the particular statute. Here, the "harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377, 1390 (2014).

Respondent's injuries are not too attenuated because they flow from the conduct the FHA prohibits. In fact, they are among the kinds of injuries Congress sought to prevent, and the causal chain is nearly the same as the one in *Gladstone*. Adoption of a strict directness test would also seriously detract from the achievement of the FHA's purposes, which depends heavily on enforcement by persons who are not direct victims of discrimination.

Allowing respondent's case to proceed past the pleading stage will not create infinite liability. The statute of limitations imposes one limit, which respondent may still fail to overcome, and, as in *Lexmark*, 134 S. Ct. at 1395, respondent will need to provide evidence to support its allegations—a task made harder by the number of links in its causal chain. Unlike other potential plaintiffs, respondent can claim to represent "the whole community" harmed by discriminatory housing practices. *Trafficante*, 409 U.S. at 211 (citation omitted). It uniquely suffers from a reduced tax base and an increased strain on municipal services, problems that the FHA's drafters foresaw would flow directly from racial discrimination. And injuries associated with declining property values are closely tied to the housing practices targeted by the FHA.

ARGUMENT

I. RESPONDENT HAS ALLEGED INJURIES SUFFICIENT TO FILE A CIVIL ACTION UNDER THE FAIR HOUSING ACT

A. A Person Who Satisfies Article III's Standing Requirements May File A Civil Action Under The FHA

In 42 U.S.C. 3613, Congress has provided for "[e]nforcement" of the FHA "by private persons." The statute specifies that "[a]n aggrieved person may commence a civil action." 42 U.S.C. 3613(a)(1)(A). The phrase "[a]ggrieved person" is defined as including "any person who * * * claims to have been injured by a discriminatory housing practice." 42 U.S.C. 3602(i)(1).[3] That definition succinctly describes Article

[3] The FHA further specifies that "[p]erson" includes, *inter alia*, "corporations." 42 U.S.C. 3602(d). Respondent is a "Florida municipal corporation." J.A. 42, 279.

III's injury-in-fact requirement. In the first 14 years after the FHA was enacted, this Court held three times that the "sole requirement for standing to sue under [the Act] is the Art. III minima of injury in fact," which has not been further cabined by Congress and is not amenable to judicially created "prudential barriers." *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 372 (1982). Congress ratified those decisions in its 1988 amendments to the FHA. Any person who satisfies Article III's standing requirements may therefore file a civil action under the FHA.

1. This Court has repeatedly held that Congress intended to extend the FHA's private cause of action to the limits of Article III

In *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), the Court construed an FHA provision allowing "[a]ny person who claims to have been injured by a discriminatory housing practice" to file an administrative complaint with HUD. 42 U.S.C. 3610(a) (1970). The provision referred to such a claimant as a "person aggrieved." *Ibid.* If HUD failed to resolve the complaint, the person aggrieved could file suit. 42 U.S.C. 3610(d) (1970). Finding that "[t]he language of the Act is broad and inclusive," and that Congress understood that discriminatory housing practices harm "the whole community," the Court held that the Act showed "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Trafficante*, 409 U.S. at 209, 211 (citations and internal quotation marks omitted).

In *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979), the Court adopted the same interpretation of 42 U.S.C. 3612(a) (1970), which permitted plaintiffs to enforce FHA rights "by civil actions in appro-

priate United States district courts" without first filing complaints with HUD. After reviewing the civil-action provision's "terms and its legislative history," the Court concluded that it was "available to precisely the same class of plaintiffs" as the person-aggrieved provision. *Gladstone*, 441 U.S. at 102, 105. It therefore held that "[s]tanding under [the civil-action provision], like that under [the person-aggrieved provision], is as broad as is permitted by Article III of the Constitution." *Id.* at 109 (alterations, citation, and internal quotation marks omitted).

Finally, in *Havens*, *supra*, the Court again interpreted the scope of the civil-action provision. It explained that it had already "held that 'Congress intended standing * * * to extend to the full limits of Art. III.'" 455 U.S. at 372 (quoting *Gladstone*, 441 U.S. at 103 n.9). Accordingly, "the sole requirement for standing to sue under [the civil-action provision] is the Art. III minima of injury in fact: that the plaintiff allege that as a result of the defendant's actions he has suffered a distinct and palpable injury." *Ibid.* (citations and internal quotation marks omitted).

2. Congress's 1988 amendments ratified the Court's prior holdings that a person who has Article III injury is "aggrieved" under the FHA

In 1988, after this Court's decisions in *Trafficante*, *Gladstone*, and *Havens*, Congress amended the FHA. The amendments are "convincing support for the conclusion that Congress accepted and ratified" those decisions. *Texas Dep't of Hous. & Community Affairs* v. *Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2520 (2015).

As relevant here, the 1988 amendments specified that an "[a]ggrieved person may" either file an admin-

istrative complaint with HUD or "commence a civil action" in district court. 42 U.S.C. 3610(a)(1)(A)(i), 3613(a)(1)(A). The amendments also provided an overarching definition of "[a]ggrieved person," which includes "any person" who "claims to have been injured by a discriminatory housing practice." 42 U.S.C. 3602(i)(1).

Those statutory amendments cemented this Court's holdings in two ways. First, by specifying that an "aggrieved person" could both file an administrative complaint (followed by a civil action) and commence a civil action, Congress confirmed the Court's holding in *Gladstone* that the same statutory standard applies to administrative complainants and civil-action plaintiffs. Second, by defining an "aggrieved person" in a way that is materially identical to the broad definition of "person aggrieved" that the Court had first construed in *Trafficante*, Congress ratified this Court's holdings in *Trafficante*, *Gladstone*, and *Havens* that the FHA extends both kinds of actions to persons who satisfy Article III's standing requirements.

The legislative history confirms that understanding. The House Judiciary Committee's report cited *Gladstone* and *Havens* and explained that Section 3602(i)'s definition of "aggrieved person" used language "similar to that contained in [the prior version of Section 3610], as modified *to reaffirm the broad holdings of these cases*." H.R. Rep. No. 711, 100th Cong. 2d Sess. 23 (1988) (House Report) (emphasis added).

Thus, the text of the FHA, this Court's decisions, and Congress's ratification of the Court's decisions all lead to the same conclusion: The FHA's private cause of action extends to the limits of Article III.

3. Petitioners' reliance on Thompson *is misplaced*

In arguing otherwise, petitioners principally rely on *Thompson* v. *North American Stainless, LP*, 562 U.S. 170 (2011). That reliance is misplaced.

In *Thompson*, the Court interpreted provisions in Title VII of the Civil Rights Act of 1964 (Title VII) that extend a cause of action to a "person claiming to be aggrieved." 42 U.S.C. 2000e–5(b) and (f)(1). Relying on the "common usage" of the term "aggrieved," which it had already applied in the context of the Administrative Procedure Act (APA), 5 U.S.C. 702, the Court held that Title VII's cause of action is not coextensive with Article III and includes only the narrower class of plaintiffs who "fall[] within the 'zone of interests' sought to be protected by" Title VII. 562 U.S. at 177-178 (citation omitted).

a. Petitioners contend (BofA Br. 20-21; WF Br. 17) that, as in *Thompson*, the FHA's reference to "aggrieved person" should be construed in light of "common usage" that incorporates a zone-of-interests limitation. But petitioners' analogy to Title VII is doubly flawed.

First, unlike Title VII (or the APA), the FHA contains a definition of "aggrieved person," and that definition departs from the customary meaning of "aggrieved." Mere injury is not enough to make somebody "aggrieved" in the ordinary sense of the term. Instead, one is aggrieved only when "suffering from an infringement or denial *of legal rights*." *Webster's Third New International Dictionary* 41 (1971) (emphasis added); see *Webster's New International Dictionary* 49 (2d ed. 1943) (same); *Black's Law Dictionary* 80 (10th ed. 2014) (defining *aggrieved* as "having legal rights that are adversely affected; having been

harmed by an infringement of legal rights"); *Black's Law Dictionary* 87 (4th ed. rev. 1968) (defining *aggrieved party* as "[o]ne whose legal right is invaded by an act complained of").

In the FHA, however, Congress has exercised its right to "make a departure from the natural and popular acceptation" of *aggrieved*. *Sandifer* v. *United States Steel Corp.*, 134 S. Ct. 870, 877 (2014) (citation and quotation marks omitted). For purposes of that statute, Congress has defined "[a]ggrieved person" more broadly, as including anyone who "claims to have been injured by a discriminatory housing practice," 42 U.S.C. 3602(i)(1), and it did so after this Court had interpreted that very language as departing from that term's usual meaning. Thus, a proper plaintiff needs to claim to be injured, and that injury must be caused by a violation of the statute. But the injury does not need to be associated with a particular legal interest.

When Congress has furnished "its own definition" of a term "that is more expansive than the term's ordinary meaning," reliance on the ordinary meaning is "misplaced." *Christopher* v. *SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2171 n.18 (2012). The Court is obliged to follow the statutory definition. See *Burgess* v. *United States*, 553 U.S. 124, 129-130 (2008); see also *Gladstone*, 441 U.S. at 118 (Rehnquist, J., dissenting) (attributing *Trafficante*'s holding to "the broad definition given to the term 'person aggrieved'").

Second, the FHA and Title VII differ in another critical respect. The Court had never authoritatively construed Title VII's aggrieved-person provision before *Thompson*, but the Court has repeatedly held that the FHA's cause of action extends to the limits of Article III, and Congress ratified those decisions. Accord-

ingly, those decisions—not *Thompson*'s interpretation of Title VII—are controlling here.[4]

b. Petitioners invoke (BofA Br. 28, 31; WF Br. 19-24) dicta from *Thompson* to argue that the Court's decisions in *Trafficante*, *Gladstone*, and *Havens* did not actually "hold" that the FHA's cause of action extends to the Article III limits. The Court's decisions to that effect, however, were holdings, not dicta.

Thompson stated in passing that *Trafficante* itself had not extended the FHA to the limits of Article III because it "said that the 'person aggrieved' [in the FHA] was coextensive with Article III '*insofar as tenants of the same housing unit that is charged with discrimination are concerned.*'" 562 U.S. at 176 (quoting and adding emphasis to *Trafficante*, 409 U.S. at 209). *Thompson* inferred that, by limiting the cognizable injury to those in the same apartment complex, *Trafficante* must have adopted a zone-of-interests limit narrower than Article III. *Thompson* also conceded that the language in subsequent cases (including *Gladstone*) was broad and unqualified, and *Thompson* did not purport to overrule or narrow those cases.

In any event, *Thompson* misread the nature of the limiting language in *Trafficante*, which said that *Article III injury* extended at least to the 8200 tenants in the same apartment complex, but not necessarily to a

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[4] Bank of America compares (Br. 23) the FHA's definition to a handful of other provisions that refer to "any person" who is "injured by" statutory violations. The meaning of those provisions is not at issue here and would depend on statutory context. The FHA's definition differs from other "person * * * injured by" statutes because it refers to any person *who claims to have been* injured. 42 U.S.C. 3602(i)(1). More to the point, none of those other statutes has been broadly construed by this Court (on three separate occasions) and then been reenacted by Congress.

larger geographic area. 409 U.S. at 206, 209. That understanding is confirmed by the absence of any language in the opinion separately analyzing whether the plaintiffs' injuries were "arguably within the zone of interests to be protected" by the FHA, even though the Court had only recently imposed that requirement under the APA. *Association of Data Processing Serv. Orgs.* v. *Camp*, 397 U.S. 150, 153 (1970).

Any ambiguity about the Article III nature of that limitation was put to rest in *Gladstone*, where the Court expressed its understanding that *Trafficante* had interpreted the aggrieved-person provision to reach the limits of Article III (without the purportedly limiting language identified in *Thompson*) and held that the FHA's civil-action provision should be given the same interpretation. 441 U.S. at 109. *Gladstone* discussed the geographical limit of *Trafficante* as an Article III question, not a zone-of-interests question. *Id.* at 113 & n.27. *Gladstone* observed that, "for Art. III purposes," harm to an entire "society" could not "be the result of" the defendants' racial steering, but it concluded that harm to residents of a specific "suburban" "residential neighborhood" did fall within "[t]he constitutional limits." *Id.* at 112-114; see also *Havens*, 377 U.S. at 376-378 (again discussing geographic constraints on Article III "palpable injury"); *id.* at 382-383 (Powell, J., concurring).

Petitioners also rely (BofA Br. 31; WF Br. 19-21) on *Thompson*'s additional dictum that the "holdings" of post-*Trafficante* decisions (including *Gladstone*), although framed in terms of Article III, "are compatible with" a more limited zone-of-interests reading. 562 U.S. at 176. Petitioners' reliance on that dictum is also misplaced.

The results in each of the Court's three FHA's cases are indeed compatible with a zone-of-interests test that is narrower than Article III. Cf. pp. 21-28, *infra* (explaining that respondent would satisfy any zone-of-interests test that is compatible with *Trafficante*, *Gladstone*, and *Havens*). The binding "holding" of a case, however, includes not just its "result" but also its "rationale." *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 66-67 (1996). And in each of the three cases, the Court's controlling rationale was that the FHA extended to the limits of Article III. None of them undertook a separate zone-of-interests inquiry.

c. Petitioners' effort to reconceptualize *Trafficante*, *Gladstone*, and *Havens* as narrow zone-of-interest cases suffers from an additional fatal flaw. They agree (BofA Br. 35; WF Br. 25) that the 1988 amendments sought to ratify the holdings of those cases. Congressional intent therefore depends on what Congress would have understood the holdings of those cases to be in 1988, not on how *Thompson* characterized those holdings more than 22 years later.

Until *Thompson*, the Court's FHA cases were uniformly understood to have held that the Act extends to Article III's limits. That was described as the *holding* of *Gladstone* by the Court in *Havens*, 455 U.S. at 372, and by the dissent in *Gladstone*, 441 U.S. at 119 (Rehnquist, J.). The Court still deemed that aspect of *Trafficante* to be a holding in 1997. *Bennett* v. *Spear*, 520 U.S. 154, 165-166. Courts of appeals routinely described *Gladstone* and *Havens* as "holding" or having "held" as much.[5] When Congress sought to ratify

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[5] *E.g.*, *New West, L.P.* v. *City of Joliet*, 491 F.3d 717, 721 (7th Cir. 2007) (Easterbrook, C.J.); *Lincoln* v. *Case*, 340 F.3d 283, 289 (5th Cir. 2003); *Hamad* v. *Woodcrest Condo. Ass'n*, 328 F.3d 224,

"the broad holdings" of *Gladstone* and *Havens*, House Report 23, it surely would have understood the holdings in the same way.[6]

Bank of America suggests (Br 40) that the 1988 amendments were intended to "*decrease* reliance on private enforcement." While some amendments did expand governmental enforcement, others were meant to "strengthen[] the private enforcement section" and create "an improved system for civil action by private parties," by, *inter alia*, removing limits on punitive damages, facilitating recovery of attorney's fees, and extending the statute of limitations. House Report 17, 33, 39-40; see 42 U.S.C. 3613(a)(1) and (c)(1). In all events, there is no evidence that Congress sought to cut back on private enforcement by inserting a zone-of-interests limitation that did not previously exist. To the contrary, Congress sought to preserve the broad Article III standard.

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230 (6th Cir. 2003); *Fair Housing of Marin* v. *Combs*, 285 F.3d 899, 902 (9th Cir.), cert. denied, 537 U.S. 1018 (2002); *Liquid Carbonic Indus. Corp.* v. *FERC*, 29 F.3d 697, 703-704 (D.C. Cir. 1994); *Growth Horizons, Inc.* v. *Delaware County, Pa.*, 983 F.2d 1277, 1281 (3d Cir. 1993); *Housing Auth. of Kaw Tribe of Indians* v. *City of Ponca City*, 952 F.2d 1183, 1193 (10th Cir. 1991), cert. denied, 504 U.S. 912 (1992).

[6] Wells Fargo insinuates (Br. 26) that the House Report tied "the rights of parties" to the APA. But the report mentioned the APA to describe how hearings would be conducted and how administrative law judges would be appointed—not to describe who was an aggrieved person. House Report 36. In fact, the report contrasted the two statutes by describing the FHA's "right of aggrieved persons to intervene" as an "additional procedural safeguard[]" beyond the APA. *Ibid.*; see 42 U.S.C. 3612(c).

Given the "enhanced force" of statutory *stare decisis*, *Kimble* v. *Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015), and Congress's reliance on the Court's earlier decisions in 1988, the Court should decline petitioners' invitation to adopt a narrower construction of who is an aggrieved person under the FHA than it did in *Trafficante*, *Gladstone*, and *Havens*. The Court should reaffirm that the FHA's cause of action is available to any person who satisfies Article III's standing requirements.

B. Even If The FHA Includes A Zone-Of-Interests Limitation Narrower Than Article III, Respondent's Alleged Injuries Fall Within It

Even if the Court concludes that the FHA's cause of action does not extend to the limits of Article III, "'the breadth of the zone of interests varies according to the provisions of the law at issue'" and depends on "the statute's purposes." *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377, 1389 (2014) (quoting *Bennett*, 520 U.S. at 163). Here, "[t]he language of the [FHA] is broad and inclusive," *Trafficante*, 409 U.S. at 209, and there is no dispute that its zone of interests must encompass the various injuries alleged in *Trafficante*, *Gladstone*, and *Havens*. See *Thompson*, 562 U.S. at 176. Respondent's alleged injuries fall within that capacious zone.

1. The FHA was intended to address the kinds of injuries that respondent alleges

The FHA was enacted in part to alleviate "residential segregation and unequal housing and economic conditions," which were associated with the concentration of minority families in "'neighborhoods marked by substandard housing and general urban blight.'" *Tex-*

as Dep't of Hous. & Community Affairs, 135 S. Ct. at 2516 (quoting *Report of the National Advisory Commission on Civil Disorders* 13 (Mar. 1, 1968) (Kerner Commission Report)). The Kerner Commission explained that those segregated conditions were "creating a growing crisis of deteriorating facilities and services," and that, without "important changes in public policy," the "prospect" included, among other things, "further deterioration of already inadequate municipal tax bases." Kerner Commission Report 5, 10. Accordingly, the Commission recommended new "[f]ederal housing programs" to avoid "continu[ing] to concentrate the most impoverished and dependent segments of the population into the central-city ghettos where there is already a critical gap between the needs of the population and the public resources to deal with them." *Id.* at 13.

Senator Mondale—who introduced the amendment that was the original source of the FHA's "aggrieved person" provision, see *Trafficante*, 409 U.S. at 210 n.9—echoed the Kerner Commission when he predicted that continued housing discrimination would lead to, among other things, "a declining tax base, and the ruin brought on by absentee ownership of property." 114 Cong. Rec. 2993 (1968). Others involved in the development of the legislation explained that "the whole community" is the victim of discriminatory housing practices. *Trafficante*, 409 U.S. at 211 (quoting 114 Cong. Rec. at 2706 (statement of Sen. Javits)); see 114 Cong. Rec. at 9559 (statement of Rep. Celler) (describing housing discrimination as "deeply corrosive both for the individual and for his community").

Here, respondent alleges that petitioners' practices led to concentrated foreclosures in minority neighbor-

hoods, which had the very effects on its tax base and municipal services that the FHA's sponsors feared. J.A. 88-95, 334-341. Far from bringing the kind of "absurd suits the zone-of-interests requirement is intended to avoid" (BoA Br. 43), respondent seeks to vindicate a key purpose of the Act.

Moreover, respondent is uniquely situated to represent the injured community and is directly responsible for attending to the safety, security, and sanitation concerns associated with urban blight. Respondent's interests are not "so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized [it] to sue." *Lexmark*, 134 S. Ct. at 1389 (citation and internal quotation marks omitted).

2. **Gladstone *expressly permitted a municipality's suit for similar injuries***

Under *Thompson*'s dictum, the "holding[]" of *Gladstone* (and therefore the cognizability of the injuries alleged there) is "compatible" with the FHA's zone of interests. *Thompson*, 562 U.S. at 176. In *Gladstone*, the Court recognized that a municipality had standing to challenge racial-steering practices that could cause the same kinds of injuries to the municipality's tax base and its ability to deliver needed services that respondent asserts here. 441 U.S. at 110-111. The discriminatory conduct was allegedly "affecting the village's racial composition." *Id.* at 110. The Court discussed the "adverse consequences attendant upon" such changes, noting that a reduction in the number of buyers could reduce prices, and that a "reduction in property values directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide ser-

vices." *Id.* at 110-111. The Court held that the village had standing if racial steering had thus begun to affect the village's "racial balance and stability." *Id.* at 111.

Bank of America incorrectly asserts (Br. 30 n.12) that *Gladstone*'s standing holding rests entirely in the Court's concluding reference to "racial balance and stability." In fact, the Court "underscore[d] the import of" the threat of "serious economic dislocation to the village," 441 U.S. at 110 n.23. The first "adverse consequences" the Court discussed were economic, and it said the village would be "directly injure[d]" by a "reduction in property values" that would "diminish[] its tax base." *Id.* at 110-111. Although it acknowledged other noneconomic harms (like school segregation), *id.* at 111 & n. 24, nothing in its discussion suggests that the economic injuries were so "unrelated to the statutory prohibitions" in the FHA (*Thompson*, 562 U.S. at 178) as to fall outside its zone of interests. If the Village of Bellwood's injuries to its tax base and municipal services were within the FHA's zone of interests, then so are respondent's, assuming it can prove its allegations.

Bank of America is also wrong to suggest that respondent has no noneconomic interest comparable to Bellwood's interest in racial balance and stability. Just as a locality has a noneconomic interest in racial balance and stability, it also has a noneconomic interest in ensuring that its predominantly minority neighborhoods do not become identified as areas of concentrated foreclosures and blight. Indeed, the Kerner Commission and the Congress that enacted the FHA understood that, unless the effects of concentrated foreclosures and blight in predominantly minority areas could be remedied, it would be all but impossible for

localities to realize their interests in achieving racial balance and stability in such communities.

3. Petitioners' proposed categorical restrictions would damage interests the FHA seeks to protect

Petitioners propose several categorical restrictions on what injuries should be actionable under the FHA. Bank of America complains (Br. 37) that respondent seeks "purely monetary damages for the wholly collateral effects of alleged discrimination directed against others." Whether the effects were "wholly collateral" is relevant to the proximate-cause inquiry discussed below (see pp. 29-34, *infra*), but excluding monetary claims resulting from the effects of alleged discrimination directed against others would curtail long-standing practice under the FHA.

a. The suggestion (BofA Br. 41) that the FHA permits suit only by those who have been directly discriminated against, rather than "third parties," has already been squarely rejected by this Court. See *Havens*, 455 U.S. at 375 (finding the distinction between third-party and first-party standing "of little significance"); *Gladstone*, 441 U.S. at 103 n.9; *Trafficante*, 409 U.S. at 210 ("[T]hose who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered.").[7]

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[7] Bank of America contends (Br. 25 n.9) that HUD has "implicitly rejected" the premise that someone who has not been discriminated against cannot be an aggrieved person, because its instructions for administrative complaint filers request a "brief description of how you were discriminated against." 24 C.F.R. 108.25(d). That portion of the regulations is currently phrased in underinclusive terms, but when adopting that version—in response to a presidential memorandum about plain language—HUD made clear that "[a]ll procedures and requirements for filing housing discrim-

b. Bank of America contends that economic, financial, or monetary injury falls within the FHA's zone of interests only when plaintiffs are "individuals who suffered discrimination or were forced to live in segregated communities, or organizations spending money fighting discrimination against others." BofA Br. 14; see *id.* at 2, 33, 37, 39. Such a rule, however, would leave out the village in *Gladstone*.

It would also eliminate many of the persons and entities best situated to vindicate the FHA's purposes: participants in the housing industry who are directly harmed when their potential customers or counterparties are the targets of discrimination. The Court has recognized that "private developers" both "vindicate the FHA's objectives" and "protect their property rights" when they sue to stop municipalities from enforcing discriminatory zoning ordinances. *Texas Dep't of Hous. & Community Affairs*, 135 S. Ct. at 2522. It is irrelevant whether such a developer is interested in integrated housing for moral reasons or merely for the sake of profit. See *Baytree of Inverrary Realty Partners* v. *City of Lauderhill*, 873 F.2d 1407, 1409 (11th Cir. 1989) (citing private-developer cases). Similarly, when a seller discriminates against a potential buyer, the realtor may recover for a lost sale without asserting an independent interest in desegregation. See *Williams* v. *Miller*, 460 F. Supp. 761, 761 (N.D. Ill.

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ination complaints remain as they" were before the amendment. 64 Fed. Reg. 18,539 (Apr. 14, 1999). Those requirements allow for a complaint that includes "[a] concise statement of the facts * * * constituting the alleged discriminatory housing practice," without suggesting the complaining party needs to have been discriminated against. 24 C.F.R. 103.30(c)(4) (1999) ("Form and content of complaint").

1978), aff'd, 614 F.2d 775 (7th Cir. 1979). And a business trying to sell its property to a non-profit buyer may sue to challenge discriminatory interference with the loan, even if it has only an economic interest in doing so. See *San Pedro Hotel Co.* v. *City of L.A.*, 159 F.3d 470, 475 (9th Cir. 1998). Such commercially motivated actors may serve the FHA's interests as well as organizations with a separate antidiscrimination mission, and there is no reason to think Congress meant to prevent them from recovering.

c. Petitioners further contend that injuries are outside the FHA's zone of interests if the plaintiff "would have suffered the same alleged injuries, regardless of whether the foreclosures were the result of discrimination." WF Br. 30; see BofA Br. 42. Of course, in the absence of a discriminatory housing practice, there is no valid cause of action. But that does not limit the nature of the injuries that can be redressed when the practice is discriminatory. The critical point is that respondent has adequately alleged that petitioners' discriminatory lending practices led to the foreclosures causing its injuries.

That explains why the family evicted for discriminatory reasons may recover for the costs associated with the eviction, even though a nondiscriminatory eviction would trigger similar costs. The same is true for the homeowner whose mortgage is foreclosed upon, the developer who cannot get a necessary permit, and the realtor who loses a sale. When those injuries result from discrimination, they are within the statute's zone of interests. Here, it makes no difference that respondent could suffer similar economic injury if concentrated foreclosures were to result from lending practices that did not violate the FHA.

d. Petitioners also suggest (BofA Br. 42; WF Br. 34) that a housing practice lies beyond the statute's zone of interests if, in a particular case, it does not change a neighborhood's racial composition. The FHA, however, applies "throughout the United States," 42 U.S.C. 3601, which includes neighborhoods that are already predominantly minority. Congress has decided that *discriminatory* housing practices are proscribed. 42 U.S.C. 3604, 3605, 3617. Such practices do not cease to be discriminatory merely because today's victim of discrimination is replaced by someone of the same race. One reason that redlining (the discriminatory denial of services based on the racial character of the community) is injurious is that it tends to preserve existing residential patterns.

e. The Court has recognized the importance for the FHA of private enforcement suits, *Trafficante*, 409 U.S. at 209-211, and such suits remain a critical supplement to governmental enforcement.[8] Cf. House Report 17 (describing the 1988 amendments' intention to "strengthen the private enforcement system"). The Court should reject petitioners' attempt to use zone-of-interests analysis to close existing avenues of FHA enforcement.

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[8] In 2014, private and public organizations received a total of 27,528 complaints of housing discrimination. The large majority of them were informally handled by private, nonprofit organizations, rather than HUD, the Department of Justice, or state and local agencies. See National Fair Housing Alliance, *Where You Live Matters: 2015 Fair Housing Trends Report* 17, www.nationalfairhousing.org/Portals/33/2015-04-30 NFHA Trends Report 2015.pdf.

II. RESPONDENT HAS ADEQUATELY ALLEGED THAT ITS INJURIES WERE PROXIMATELY CAUSED BY PETITIONERS' DISCRIMINATORY PRACTICES

The court of appeals concluded that a plaintiff bringing a private enforcement suit under the FHA must establish that its damages were proximately caused by the defendant's discriminatory housing practices. BofA Pet. App. 30a-33a. That conclusion is consistent with this Court's recognition in other contexts that an FHA claim for damages is "in effect, a tort action," which incorporates background principles of tort law. *Meyer* v. *Holley*, 537 U.S. 280, 285 (2003); see *Curtis* v. *Loether*, 415 U.S. 189, 195 (1974). But there is no settled common-law test for proximate cause —a concept meant to capture "the policy-based judgment that not all factual causes contributing to an injury should be legally cognizable causes." *CSX Transp., Inc.* v. *McBride*, 564 U.S. 685, 701 (2011) (plurality opinion) (quoting four different formulations).

When a statute includes an implicit proximate-cause requirement, the "analysis is controlled by the nature of the statutory cause of action." *Lexmark*, 134 S. Ct. at 1390. The ultimate question is "whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Ibid.* Especially given the broad and inclusive nature of the FHA, respondent's alleged injuries satisfy that test.

1. Petitioners contend (BofA Br. 44-45, 52-56; WF Br. 36, 46-47) that the chain of causation between their allegedly discriminatory practices and respondent's asserted injuries is too "attenuated." That contention is incorrect.

One way to establish a "sufficiently close connection" to statutorily prohibited conduct (*Lexmark*, 134

S. Ct. at 1390) is to show that an injury is of the kind that the "statute intended to protect" against. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts*, § 43, at 286 (5th ed. 1984). As discussed above, the FHA's prohibition on discriminatory housing practices—especially when concentrated in predominantly minority urban areas—was meant in part to prevent "further deterioration" of "municipal tax bases" and "the ruin brought on by absentee ownership of property." Kerner Commission Report 10; 114 Cong. Rec. at 2993. Those are precisely the kind of injuries that respondent asserts were caused by petitioners' discriminatory conduct. They cannot be considered so attenuated as to fail proximate-cause scrutiny.

Under petitioners' view, the comparable injuries alleged by the village in *Gladstone* would have failed proximate-cause analysis. The causal chain there was as follows: The discriminatory conduct allegedly affected the village's racial composition, which could reduce the number of buyers, which could reduce prices, which would reduce property values, which would directly injure the municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services. 441 U.S. at 110-111. *Gladstone* confirms that when a plaintiff is seeking to redress injuries that Congress sought to prevent, the number of links in the chain is not controlling.

Nor, given the FHA's purposes and history, does the number of links in the alleged causal chain defeat the claims brought by respondent. The first portion of the chain—from petitioners' loan terms, to minority borrowers' defaults, to foreclosures—could be the basis for suits brought by the individual borrowers, which

petitioners do not suggest would be barred at the outset by proximate cause. Here, the court of appeals found that respondent adequately alleges that, with statistical analysis, it can separate foreclosures flowing from discriminatory loans from those caused by independent factors. BofA Pet. App. 39a. The next link—that vacancies resulting from geographically concentrated foreclosures would depress a neighborhood's property values—follows directly from basic principles of supply and demand, paralleling *Gladstone*'s recognition that "prices may be deflected downward" if the "total number of buyers" in a neighborhood is reduced by racial steering. 441 U.S. at 110; cf. *Munoz-Mendoza* v. *Pierce*, 711 F.2d 421, 429 (1st Cir. 1983) (Breyer, J.) (finding no break in causal chain between development project and increased racial segregation even though rental-rate increases would "depend upon the voluntary actions of private parties, such as landlords"). The rest of the chain is essentially the same as in *Gladstone*: that a "reduction in property values" diminishes the municipality's tax base and puts increased pressure on its ability to provide services. 441 U.S. at 110-111.

2. Bank of America contends (Br. 46) that the Court should apply "the common law's directness requirement," which it describes as "generally bar[ring] recovery of damages incidental to wrongful acts directed at a third person." It anchors that rule in Justice Holmes's pronouncement that "[t]he general tendency of the law, in regard to damages at least, is not to go beyond the first step." *Southern Pac. Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918). But the first-step principle arose in a context far different from the FHA, where commercial actors suf-

fered economic injuries that they could pass on to other commercial actors (often by reselling an overpriced product at a higher price). Thus, Justice Holmes's decision prevented a railroad that had charged an allegedly excessive rate on lumber from defending against the shipper's suit on the ground that the shipper had already recouped the cost from its customers and therefore suffered no injury. *Id.* at 533-534. The Court later applied that principle in the antitrust context, reasoning that the initial buyer (the direct victim) is the best plaintiff to vindicate the wrong reflected in the overcharge. See *Associated Gen. Contractors of Cal., Inc.* v. *California State Council of Carpenters*, 459 U.S. 519, 534-535, 544-545 (1983); *Illinois Brick Co.* v. *Illinois*, 431 U.S. 720, 745-746 (1977). And, later still, that principle was applied to RICO's civil-action provision, 18 U.S.C. 1964(c), which was "modeled * * * on the civil-action provision of the federal antitrust laws." *Holmes* v. *Securities Investor Prot. Corp.*, 503 U.S. 258, 267 (1992).

The first-step paradigm can be relaxed even in the context of interconnected commercial actors, see *Lexmark*, 134 S. Ct. at 1394, and is, in any event, a poor fit for the FHA. The Court has already recognized that persons who suffer indirect harm may sue under the FHA. See p. 25, *supra*. Moreover, an indirect victim of discrimination does not simply share a pool of damages with the individual who is discriminated against, but generally suffers separate damages of its own—as when a realtor loses a commission, a seller loses a buyer, or a developer loses the profits from a project that never gets approved. See pp. 26-27, *supra*. And unlike in the RICO and antitrust contexts, it is not true that the direct victims of racial discrimination

"can generally be counted on to vindicate the law as private attorneys general." *Holmes*, 503 U.S. at 269-270. Their damages may be minimal; they may not wish to vindicate a right to live among those who want to exclude them; or they may not be easily identified (especially if they are the hypothetical future customers of a developer who cannot get a permit).

3. That is not to say that the FHA affords "infinite liability" for those harmed by discrimination against another. BofA Br. 45 (citation omitted); WF Br. 42. For one thing, it imposes a two-year statute of limitations on private claims, 42 U.S.C. 3613(a)(1)(A), and a one-year limit on administrative complaints, 42 U.S.C. 3610(a)(1)(A)(i).[9] And respondent, like the plaintiff in *Lexmark*, will not "obtain relief without *evidence*" to establish that its allegations are true, 134 S. Ct. at 1395—a task that is made harder, but not impossible, by the number of steps it will need to prove.

A finding of proximate cause in these cases, which involve the unique relationship between a municipality and its constituent neighborhoods, will not mean that every other indirectly injured entity in the neighborhood must also be able to maintain a claim, just as *Lexmark* did not categorically allow all twice-removed Lanham Act plaintiffs to sue, 134 S. Ct. at 1395. Petitioners exaggerate when they say (BofA Br. 48, 57-58; WF Br. 50) that allowing respondent's suit would open

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[9] That is not a merely theoretical hurdle. The court of appeals instructed the district court to consider the statute-of-limitations question on remand. BofA Pet. App. 41a-47a. Similar suits have been dismissed on that ground. See *City of L.A.* v. *Wells Fargo & Co.*, No. 13-cv-9007, 2015 WL 4398858, at *8 (C.D. Cal. July 17, 2015); *City of L.A.* v. *Bank of Am. Corp.*, No. 13-cv-9046, 2015 WL 4880511, at *6 (C.D. Cal. May 11, 2015).

the door to suits by municipal employees for lost wages or by local stores or utility companies for lost customers.

Unlike all of those potential plaintiffs, respondent can claim to represent the "community itself," which Wells Fargo concedes (Br. 45) is "injured at the first step" by discrimination. See also *Trafficante*, 409 U.S. at 211. Respondent also uniquely suffers from a reduced tax base and an increased strain on municipal services, problems that Congress identified as ones flowing from racial discrimination in housing. And injuries associated directly with declining property values are closely tied to the housing practices targeted by the FHA (*e.g.*, sales, rentals, mortgage services, and real-estate transactions). 42 U.S.C. 3604-3606.

For similar reasons, petitioners err in comparing (BofA Br. 22; WF Br. 30) respondent to the hypothetical shareholder in *Thompson*, 562 U.S. at 177, who could not sue under Title VII to recover the stock value he lost after the company fired a valuable employee for discriminatory reasons. Title VII was not directed at the effects of employment discrimination on share prices; but the FHA was, in part, intended to eliminate the effects that discriminatory housing practices have on property values and a city's tax base.

Under the circumstances, respondent has adequately alleged injuries with "a sufficiently close connection to the conduct the statute prohibits" (*Lexmark*, 134 S. Ct. at 1390) to show proximate cause at the pleading stage.

CONCLUSION

The judgments of the court of appeals should be affirmed.

Respectfully submitted.

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OCTOBER 2016

APPENDIX

1. 42 U.S.C. 3601 provides:

Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

2. 42 U.S.C. 3602 provides in pertinent part:

Definitions

As used in this subchapter—

* * * * *

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

* * * * *

(i) "Aggrieved person" includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

* * * * *

3. 42 U.S.C. 3610 provides:

Administrative enforcement; preliminary matters

(a) Complaints and answers

(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint—

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) **Investigative report and conciliation**

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this subchapter.

(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing—

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements; and

(v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement

Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 3614 of this title for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final

disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 3612 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 3614(a) and 3614(c) of this title or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice—

(A) within the jurisdiction of a State or local public agency; and

(B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take

no further action with respect to such complaint unless—

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency; and

(iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this subchapter.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on September 13, 1988, and ends 40 months after September 13, 1988, each agency certified (including an agency certified for

interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this subchapter on the day before September 13, 1988, shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on September 13, 1988. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable cause determination and effect

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100

days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

(B) Such charge—

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 3614 of this title, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Sec-

retary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h)Service of copies of charge

After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 3612(a) of this title and the effect of such an election, to be served—

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

4. 42 U.S.C. 3612 provides in pertinent part:

Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (*o*) of this section in lieu of a hearing under subsection (b) of this section. The

election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of Title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

* * * * *

(i) Judicial review

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of Title 28.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) Court enforcement of administrative order upon petition by Secretary

(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition.praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k)Relief which may be granted

(1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may—

(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

* * * * *

(*o*) **Civil action for enforcement when election is made for such civil action**

(1) If an election is made under subsection (a) of this section, the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of Title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has

occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 3613 of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's fees

In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5 or by section 2412 of title 28.

5. 42 U.S.C. 3613 provides:

Enforcement by private persons

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing

practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) Appointment of attorney by court

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this subchapter.

(e) Intervention by Attorney General

Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

6. 42 U.S.C. 3614 provides:

Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement

(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 3610(g) of this title.

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months

after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 3610(c) of this title.

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 3610(c) of this title.

(c) Enforcement of subpoenas

The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b)

(1) In a civil action under subsection (a) or (b) of this section, the court—

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28.

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

7. 42 U.S.C. 3610 (1970) provided in pertinent part:

Enforcement.

(a) Person aggrieved; complaint; copy; investigation; informal proceedings; violations of secrecy; penalties.

Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

* * * * *

(d) Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders.

If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

* * * * *

8. 42 U.S.C. 3612 (1970) provided:

Enforcement by private persons.

(a) Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders.

The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

(b) **Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security.**

Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) **Injunctive relief and damages; limitation; court costs; attorney fees.**

The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.